IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.261 of 2006
CHANDRA KALA DEVI & ANR
Versus
DIVISIONAL MANAGER,NATIONAL IN
For the appellant :- Mr. Sunil Kumar Pandey, Advocate
For the Respondent:- Shailendra Kumar, Advocate.

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7. 03.09.08. This appeal has been preferred for enhancement of the award granted to the appellants in Claim Case No. 88/2004 passed by the learned VIIIth Additional District Judge-cum-Motor Accident Claim Tribunal, Muzaffarpur on 29. 4. 2006.

Learned Tribunal on consideration of annual income of the deceased has taken notional income of the deceased of Rs. 15,000/-(fifteen thousand) as given in 2nd schedule of Motor Vehicle Act and thereafter, applying multiplier system 15 on its annual income and deducting one third as personal expenses of the deceased from the said income, it came Rs. 1,50,000/- (One lac fifty thousand) which was paid by way of compensation to the claimants (wife and other dependent of the deceased). Besides Rs. 7,000/- (seven thousand) by way of consortium and funeral expense (Rs. 5,000/- + Rs. 2,000/-) was also given. So in all, the amount of compensation would come to Rs. 1,57,000/-(one lac fifty thousand). Out of which ad interim compensation of Rs. 50,000/- (fifty thousand) has already been paid by the Insurance Company.

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Now as per submission of the learned counsel for the Insurance Company, Rs. 1,07,000/- (one lac seven thousand) has already been paid to the claimants.

Heard learned counsel for the appellant and learned counsel for the respondent Insurance Company.

It has been submitted on behalf of the appellants that the appellant was earning his livelihood by way of Mason (Rajmistri). He was earning Rs. 3600/- (thiry six hundred) per month which was corroborated from the document purported to have been granted by the contractor, Prabhu Kumar Singh which is Ext. 1. But the same has not been considered in right perspective by the learned Tribunal. In addition to that, son of the deceased has also supported the fact that his father was a Mason (Rajmistri) earning Rs. 3600/- (thirty six hundred) per month under the contractor.

On the other hand, learned counsel for the National Insurance Company, Respondent has submitted that, although, seven witnesses have been examined in the Tribunal, but except son of the deceased, none has come to support that the deceased was a Mason, earning Rs. 3600/- (thirty six hundred) per month as such certificate was granted by Prabhu Kumar Singh. It is further submitted that no witness has examined to say that the contractor Prabhu Kumar Singh is a authorized contractor.

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Perused the record and also notification dated 15.5.04, in respect of minimum of wages in schedule 4 wherein even unskilled labourer are entitled to minimum wage at the rate of Rs. 68/- per day. Deducting 52 Sundays from 365 days of the year it comes to 313 working days. This 313 working days multiplying by of Rs. 68/- comes to Rs. 21, 284/- (twenty one thousand two hundred eighty four) per annum. Applying multiplier system 15, it comes to Rs. 3,19,260/- (three lacs nineteen thousand two hundred sixty) one third of which comes to Rs. 1,06,420/- (one lac six thousand four hundred twenty) . Deducting this amount of Rs. 1,06,420/- from Rs. 3,19,260/- its comes to Rs. 2,12,840/- (two lacs twelve thousand eight hundred forty) added

Rs. 7,000/- as a sum of Rs. 5,000/- as consortium and Rs. 2,000/- as funeral expense, it comes to Rs. 2,19,840/- (two lacs nineteen thousand eight hundred forty). Out of which Rs. 1,57,000/- (one lac fifty seven thousand) has already been paid to the claimants so the remaining amount comes to Rs. 62, 840/- (sixty two thousand eight hundred forty) which should be paid by the respondent Insurance Company within two months from the date of communication of this order failing which interest @ 9% shall be payable to the claimants from the date of passing of the order.

With the aforesaid modification, this appeal shall stand dismissed.

m.p. **(Subash Chandra Jha,J.)**

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